Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
Amendment of Parts 20 and 24 of the	)	WT Docket No. 96-59
Commission's Rules -- Broadband PCS	)	
Competitive Bidding and the Commercial	)	
Mobile Radio Service Spectrum Cap	)	
	)	
Amendment of the Commission's Cellular/PCS	)	
Cross-Ownership Rule	)	GN Docket No. 90-314

OPPOSITION TO PETITION FOR RECONSIDERATION

OF OMNIPOINT CORPORATION

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August 28, 1996

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SUMMARY

Radiofone, Inc. (Radiofone), by its attorneys, and pursuant to Section 1.429 of the Commission's Rules, 47 C.F.R. § 1.429, hereby opposes Omnipoint Corporation's (Omnipoint's) Petition for Reconsideration of the Report and Order (Amendment of Parts 20 and 24 of the Commission's Rules), WT Docket No. 96-59, GN Docket No. 90-314, FCC 96-278, released June 24, 1996.

Omnipoint requests the Commission to reinstate the cellular/PCS cross-ownership rule. The Commission should deny Omnipoint's request for four reasons. First, Omnipoint does not have standing to challenge the Report and Order because it has not demonstrated that it was harmed by the elimination of the cellular/PCS cross-ownership rule. Second, Omnipoint was on notice that the rule was being challenged. Omnipoint should have taken the possible elimination of the rule into consideration in developing its business plans. Third, the Sixth Circuit required the Commission to provide documentary support for its fears of anticompetitive conduct before it could retain the rule. Omnipoint has not provided such documentary support. Instead, Omnipoint has reiterated old arguments and has not presented any evidence that was not presented to the Sixth Circuit. Fourth, Omnipoint's antitrust analysis is flawed, and in fact, partly supports Radiofone's request that the Commission eliminate the 45 MHZ spectrum cap as it applies to non-wireline cellular carriers. Radiofone Pet. for Partial Recon., Docket No. 96-59, filed July 31, 1996.

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Radiofone, Inc. (Radiofone), by its attorneys, and pursuant to Section 1.429 of the Commission's Rules, 47 C.F.R. § 1.429, hereby opposes Omnipoint Corporation's (Omnipoint's) Petition for Reconsideration of the Report and Order (Amendment of Parts 20 and 24 of the Commission's Rules), WT Docket No. 96-59, GN Docket No. 90-314, FCC 96-278, released June 24, 1996.

Radiofone and its affiliates are the non-wireline cellular carriers in New Orleans, Baton Rouge and Houma-Thibodaux, Louisiana. Radiofone was a petitioner in Cincinnati Bell Tel. Co. v. FCC, 69 F.3d 752 (6th Cir. 1995) [hereinafter Cincinnati Bell I]. In that case, the United States Court of Appeals for the Sixth Circuit (Sixth Circuit) held the cellular/PCS cross-ownership rule to be arbitrary and capricious. The Commission eliminated the rule on remand in the Report and Order.

Omnipoint requests the Commission to reinstate the cellular/PCS cross-ownership rule. The Commission should deny Omnipoint's request for four reasons. First, Omnipoint does not have

standing to challenge the Report and Order because it has not demonstrated that it was harmed by the elimination of the cellular/PCS cross-ownership rule. Second, Omnipoint was on notice that the rule was being challenged. Omnipoint should have taken the possible elimination of the rule into consideration in developing its business plans. Third, the Sixth Circuit required the Commission to provide documentary support for its fears of anticompetitive conduct before it could retain the rule. Omnipoint has not provided such documentary support. Instead, Omnipoint has reiterated old arguments and has not presented any evidence that was not presented to the Sixth Circuit. Fourth, Omnipoint's antitrust analysis is flawed, and in fact, partly supports Radiofone's request that the Commission modify the 45 MHZ spectrum cap as it applies to non-wireline cellular carriers. Radiofone Pet. for Partial Recon., Docket No. 96-59, filed July 31, 1996 [hereinafter Radiofone Pet.].

These points are discussed below.

I. Omnipoint Has No Standing to Challenge the Rule Change

Omnipoint has not provided any evidence demonstrating that it has been harmed by the rule change. Omnipoint asserts that it has committed to pay over $750 million in license fees, but does not provide any evidence that it has been harmed by the rule change. Omnipoint Pet. at 5. The Commission therefore should deny Omnipoint's Petition for Reconsideration for lack of standing. See Memorandum Opinion and Order (G&S Television Network, Inc.), 7 FCC Rcd. 4509, 4509-10 (Domestic Fac. Div. 1992) (standing requires a direct injury) (citing Sierra Club v. Morton, 405 U.S. 727, 732-33 (1972) (party seeking review must be among the injured)); see also O'Shea v. Littleton, 414 U.S. 488, 494 (1974) (party must allege a threatened or actual, real and immediate injury).

II. Omnipoint Made Its Business Plans at Its Own Risk

Nevertheless, if the Commission were to consider the merits of Omnipoint's Petition, it would become apparent that Omnipoint is the cause of the situation it allegedly is facing. Omnipoint claims that it relied on the Commission's cellular/PCS cross-ownership rule in developing its business plans. Omnipoint Pet. at 5. However, Omnipoint was on notice that the cellular/PCS cross-ownership rule was subject to challenge. Its reliance on the rule was a business decision that Omnipoint made at its own risk.

A. Omnipoint Was on Notice that the Rule Was Being Challenged

The cellular/PCS cross-ownership rule had its genesis in the Notice of Proposed Rule Making and Tentative Decision (Amendment of the Commission's Rules to Establish New Personal Communications Services), 7 FCC Rcd. 5676 (1992) [hereinafter NPRM], released on August 14, 1992, in Docket No. 90-314. In that Notice, the Commission asked for comment on whether cellular providers should be allowed to obtain PCS licenses in their cellular service areas. Id. at 5702-03. As noted in the subsequent order adopting rules for PCS, including the cellular/PCS cross-ownership rule, Omnipoint participated in that docket. Second Report and Order (Amendment of the Commission's Rules to Establish New Personal Communications Services), 8 FCC Rcd. 7700, 7717 (1993) (citing Omnipoint's comments). Omnipoint clearly knew or, at least, should have known that any cross-ownership rules adopted in that proceeding were subject to reconsideration and judicial review.[1]

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[1] Omnipoint also should have realized that the tentative decision on its New York pioneer's preference license, which was made in Fall 1992, came at a time when the PCS rules were in their infancy.

Indeed, on December 8, 1993, Radiofone filed a Petition for Partial Reconsideration of the Second Report and Order, requesting the Commission to eliminate the cellular/PCS cross-ownership rule. Radiofone Pet. for Partial Rec

on., GEN Docket No. 90-314, filed Dec. 8, 1993, at 3-19. That petition was on Public Notice on December 15, 1993. 58 Fed. Reg. 65,595 (1993). Thus, Omnipoint was on notice at that time that the cellular/PCS cross-ownership rule might be changed. See Memorandum Opinion and Order (Amendment of Section 73.202(b)), 4 FCC Rcd. 2181, 2182 (1989) (applicants held to be on notice of possible changes due to Public Notice being given of petitions for reconsideration before applications were filed).

Additionally, in the Memorandum Opinion and Order (Amendment of the Commission's Rules to Establish New Personal Communications Services), 9 FCC Rcd. 4957, 4999 (1994) [hereinafter MO&O], released June 13, 1994, and in the Third Memorandum Opinion and Order (Amendment of the Commission's Rules to Establish New Personal Communications Services), 9 FCC Rcd. 6908, 6913 (1994) [hereinafter Third MO&O], released October 19, 1994, the Commission noted that parties, including Radiofone, had sought reconsideration and elimination of the cellular/PCS cross-ownership rule.

In July 1994 and January 1995, several parties filed petitions for review of the MO&O and Third MO&O. Those cases were consolidated in Cincinnati Bell I. Assuming Omnipoint engaged in minimal due diligence at that time, Omnipoint readily would have learned about those petitions for review. Moreover, Omnipoint's president, George Schmitt, previously was president of PCS PrimeCo, which includes NYNEX, Bell Atlantic and U S WEST. NYNEX, Bell Atlantic and U S

WEST were petitioners and intervenors in the cases that were consolidated in Cincinnati Bell I. Thus, Omnipoint was aware of the petitions for review.

Furthermore, the pendency of Cincinnati Bell I was reported in the media. For example, on April 6, 1995, Communications Daily, at 8, reported that Radiofone was challenging the cellular/PCS cross-ownership rule in court. See also FCC's Plan to Modify C-Block Auction Rules Angers Small PCS Hopefuls, PCS Week, July 19, 1995 (noting Radiofone's appeal of cellular/PCS cross-ownership rule).

Finally, in the C Block Supplemental Bidder Package for the auction which was scheduled to commence December 11, 1995, at 23, the FCC informed potential applicants about the pendency of Cincinnati Bell I, noting that it was required to notify applicants "who may be affected, should the petitioners prevail."

Without question, Omnipoint was on notice that the cellular/PCS cross-ownership rule was being challenged. Omnipoint should have engaged in adequate due diligence in order to monitor the course of those challenges. Omnipoint has no excuse for its alleged reliance on the rule.

B. Omnipoint's Reliance Interests Are of No Consequence Where It Had Notice of Challenges to the Rule

The three cases that Omnipoint cites concerning reliance interests do not apply here. Omnipoint Pet. at 5. First, in Bowen v. Georgetown Univ. Hosp., 488 U.S. 204, 220 (1988) (Scalia, J., dissenting), Justice Scalia mentioned that a rule may make "worthless substantial past investment." However, Omnipoint has not demonstrated that its investments have been made worthless. And even if it had, Justice Scalia states that the rule change may be sustained "if it is

reasonable." Id. Here, the cellular/PCS cross-ownership rule was held to be arbitrary and capricious by the Sixth Circuit in Cincinnati Bell I. Elimination of the rule therefore was unquestionably reasonable.

Second, in National Ass'n of Independent Television Producers & Distributors v. FCC, 502 F.2d 249, 255 (2d Cir. 1974), the court noted that parties who have notice that a rule may change should not rely on the agency's acquiescence to their activities. Thus, both Bowen and National Ass'n of Independent Television Producers & Distributors do not support Omnipoint's objection to a reasonable rule change when it was on notice that the rule was subject to, and being, challenged.

Finally, in the Sixth Report and Order (Implementation of Section 309(j) of the Communications Act - Competitive Bidding), 11 FCC Rcd. 136, 146 (1995), as noted by Omnipoint, the Commission retained the 49% equity exception due to the reliance interests of the minority- and women-owned businesses. In that case, the Commission was under a Congressional mandate to make opportunities available for minorities and women. Id. By comparison, in the case at hand, the cellular/PCS cross-ownership rule restricted opportunities for cellular carriers, and Omnipoint is not a cellular carrier.

In sum, the FCC correctly eliminated the cellular/PCS cross-ownership rule in response to Cincinnati Bell I and the possible elimination of the rule is a business risk Omnipoint chose to take.

III. Omnipoint Provides No Documentary Support for Its Fears of Competition from Cellular Carriers

Omnipoint asserts that the cellular/PCS cross-ownership restriction should be reinstated based on documentary support that Omnipoint asserts already exists. Omnipoint Pet. at 6. Omnipoint is correct in noting that the Sixth Circuit required the Commission to provide documentary support for its fears of anticompetitive conduct before the Commission could prohibit cellular carriers such as Radiofone from obtaining 30 MHZ PCS licenses. Cincinnati Bell I, 69 F.3d at 764. However, rather than provide such documentary support, Omnipoint, instead, recites prior Commission decisions and rehashes old arguments.

The only allegedly new support offered by Omnipoint is the First Report (Implementation of Section 6002(B) of the Omnibus Budget Reconciliation Act of 1993), 10 FCC Rcd. 8844 (1994). Omnipoint Pet. at 14. Omnipoint erroneously asserts that the Sixth Circuit did not consider that First Report. Id. The Commission and Radiofone each filed copies of the First Report with the Sixth Circuit, and referenced the pertinent passages. E.g., Letter from Ashton Hardy, Counsel for Radiofone, Inc., to Clerk, Sixth Circuit, Oct. 2, 1995, Cincinnati Bell I. Thus, when the Sixth Circuit stated that the record was "insufficient" to support the cellular/PCS cross-ownership rule, the record that the Sixth Circuit referenced included the First Report. 69 F.3d at 763.

In sum, Omnipoint has not provided any evidence that was not before the Sixth Circuit.

IV. Omnipoint's Antitrust Analysis Does Not Justify Reinstating the Cellular/PCS Cross-Ownership Rule

Omnipoint's final challenge to the elimination of the cellular/PCS cross-ownership rule is its contention that the Commission's HHI analysis is flawed. Radiofone agrees that the HHI analysis is flawed. However, the flaws in the HHI analysis support the modification of the 45 MHZ spectrum cap as it applies to non-wireline cellular carriers, not the reinstatement of the cellular/PCS cross-ownership rule, as Omnipoint requests.

A. Market Shares Should Be Measured by Capacity, But Spectrum Allocation Is an Invalid Measure of Capacity

Omnipoint criticizes the Commission's use of capacity as a measure of market share.[2] Omnipoint Pet. at 8. Omnipoint's argument is based largely on the apparent anomaly that measuring market share by spectrum capacity suggests that a 30 MHZ C Block licensee that has not yet begun service has a market share greater than an existing 25 MHZ cellular licensee. While it may seem odd for a future entrant to have a higher market share than an existing competitor based solely on its potential capacity, such is neither illogical nor unprecedented. The fact is that future competitive significance may be better reflected by prospective capacity than current sales. See United States v. General Dynamics Corp., 415 U.S. 486 (1974). Once that fact is recognized, it naturally follows

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[2] Radiofone has agreed that capacity is a better measure of market share than correct sales, but Radiofone pointed out that spectrum allocation is an invalid measure of capacity. Radiofone Pet. At 9-11.

that there will be markets where the firm with the higher market share will have the lesser current sales. Omnipoint thus errs in criticizing the use of capacity as a measurement of market share.

It is correct, however, in questioning the use of spectrum allocation as a proxy for capacity. The fact that a future entrant is allocated a higher share than a significant current provider, though not necessarily wrong, should invite a closer look. At the least, it suggests that spectrum allocation may not be a valid measurement of market share. As Radiofone noted in its Petition for Partial Reconsideration, at 9-11, spectrum allocations do not accurately reflect capacity.

Omnipoint points out that in General Dynamics Corp. market share was based on capacity only for such companies as were currently producing in the market, not for non-coal producing companies with coal reserves on their property. The conclusion from this argument, though Omnipoint is reluctant to state it explicitly, is that in most markets the PCS market share should be 0%. Omnipoint Pet. at 6-9. Consequently, Omnipoint argues, the Commission should reinstate its prohibition against cellular ownership of more than 10 MHZ of PCS spectrum.

Omnipoint's argument is seriously flawed, and would not lead to its conclusion even were it a correct articulation of competitive forces. The Horizontal Merger Guidelines issued by the Department of Justice and Federal Trade Commission recognize that under certain circumstances the market will include firms not currently producing or selling the relevant product. The Guidelines identify market participants in § 1.3. Identification naturally begins with firms that currently produce or sell the relevant product in the relevant market. § 1.31. However, the Guidelines then discuss the inclusion of firms not currently producing: "In addition, the Agency will identify other firms not currently producing or selling the relevant product in the relevant area as participating in

the relevant market if their inclusion would more accurately reflect probable supply responses." § 1.32.[3]

Once the market participants are identified, shares are calculated "using the best indicator of firms' future competitive significance." § 1.41. Where capacity better reflects future competitive significance, it will be used instead of sales. § 1.41. In fact, "[w]here all firms have, on a forward-looking basis, an equal likelihood of securing sales, the Agency will assign firms equal shares." § 1.41 n.15. Radiofone believes equal shares would be inappropriate because it would ignore all competitors other than cellular, PCS and SMR. Such an analysis does recognize, however, that current sales, or the absence of current sales, may not properly reflect market shares. The important goal of a market share analysis is to determine the state of competition in the future. In this instance, the Commission should have found significant competition among a variety of communications providers.

Moreover, even assuming, for the sake of argument, that Omnipoint's analysis is correct, it would not lead in the direction Omnipoint desires. If prospective PCS providers have a 0% share because they are not yet providing service, then an acquisition of a PCS license by a cellular provider would be competitively irrelevant because it would not increase concentration. If that were the case, then no limitation on cross-ownership could be justified. Omnipoint goes too far in suggesting that PCS licensees have a 0% share. However, Omnipoint makes a valid point that the Commission has

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[3] The Guidelines address the more usual situation of an existing market into which firms would enter in response to an increase in price. § 1.32. However, in the case at hand, entry will result from the availability of new licenses, not in response to a price increase. In sum, it can be predicted with a reasonable degree of certainty that additional firms will enter the market in the near future, and those firms must be considered in any measurement of market power.

overstated the market power of PCS licensees. Omnipoint's analysis therefore supports Radiofone's position that the restrictions on the participation of cellular carriers in PCS should be further relaxed, not that the restrictions should be tightened, as Omnipoint seeks. Radiofone Pet. at 21-22 (requesting the Commission to modify the 45 MHZ spectrum cap for non-wireline cellular carriers).

Omnipoint is on stronger footing in noting the differences between cellular and PCS, although its analysis again leads in a direction more supportive of Radiofone's position than Omnipoint's. Omnipoint argues that "PCS and cellular could not be more different in terms of market share, infrastructure development, control over distribution channels, and operational experience . . . ." Omnipoint Pet. at 6. While Omnipoint has engaged in a bit of hyperbole, it is correct to note that there are substantial differences between PCS and cellular. That PCS and cellular have significant differences in cost structure and development would make collusion among cellular and PCS firms (the danger normally associated with concentration that is high but not monopolistic) virtually impossible. As noted in the Guidelines, collusion is facilitated by firm homogeneity, standardized pricing, standardized product variables, and stable market shares. § 2.11.[4] It is also generally well accepted that consistent cost structures are necessary for effective collusion. Where costs are significantly different, it is more difficult to collude on prices or quantities, and the more efficient firm can typically gain more by competing aggressively than by colluding. 2A P. Areeda, H. Hovenkamp & J. Solow, Antitrust Law (Rev. Ed. 1995) ¶ 405b1 ("Achieving agreement on price

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[4] The Guidelines address the circumstances in which challenge is likely, and so they focused on the factors that make injury more probable. The necessary implication is that the absence of these factors makes competitive injury less likely.

will be difficult for firms having different costs, capacities, or expectations . . . . Efficient firms operating at lower costs will generally prefer a lower cartel price.")

B. The HHI Score Does Not Indicate Likely Injury to Competition

Omnipoint argues that the HHI score of "close to 1900" requires the conclusion that cross-ownership of PCS and cellular systems will be likely to injure competition. Omnipoint Pet. at 9-11. However, for the reasons discussed in Radiofone's Petition for Partial Reconsideration (i.e., the Commission excluded from the market many competing communications services, and erroneously equated capacity with spectrum allocation), the HHI cannot properly be calculated to be anywhere close to 1900. Radiofone Pet. at 9-11. An analysis that properly accounts for the many forms of competition confronting CMRS and which properly measures capacity would show an HHI score of much lower than 1900. At the lower, proper score, cross-ownership of a cellular and PCS license would be unlikely to injure competition, unless the owner also provides wireline service. Moreover, even if the HHI were properly measured at close to 1900, there are factors other than concentration that assure competitive functioning of the market. Radiofone Pet. at 11-16.

C. Other Competitive Factors Fail to Support Omnipoint's Proposed Reinstatement of the Cellular/PCS Cross-Ownership Rule

Omnipoint lists a number of factors which it asserts represent threats to competition warranting the reinstatement of the cellular/PCS cross-ownership rule. Omnipoint Br. at 11-13. However, the dangers it cites do not justify the ban. For example, Omnipoint complains of the millions of dollars PCS licensees must pay for their licenses, and asserts that these are costs not

incurred by cellular providers. Omnipoint Br. at 11. Cellular providers do not incur PCS licensing costs for the obvious fact that they do not have PCS licenses. The Commission can be sure that any cellular provider that obtains a PCS license will have outbid other potential PCS licensees, and thus will incur the same or greater expense. Omnipoint is not satisfied by this, and argues that cellular firms will pay for such licenses from their "duopoly"[5] profits. The source of funds used to enter a business is competitively irrelevant. See Berkey Photo, Inc. v. Eastman Kodak Co., 603 F.2d 263, 276 (2d Cir. 1979) ("So long as we allow a firm to compete in several fields, we must expect it to seek the competitive advantages of its broad-based activity . . . ."), cert. denied, 444 U.S. 1093 (1980); Union Leader Corp. v. Newspapers of New England, Inc., 284 F.2d 582, 589 (1st Cir. 1960) ("But we have never heard of a principle that a corporation having affluent shareholders could not compete."), cert. denied, 365 U.S. 833 (1961). Money is fungible. The effect on competition is no different if the financing for purchasing a license comes from monopoly profits in a related market, undistributed funds earned competitively, lottery winnings or an inheritance.

Omnipoint also complains that the cellular operators already have access to the best site locations. Omnipoint Pet. at 11. This is a somewhat dubious proposition because the number of good site locations far exceeds cellular needs. In any event, Omnipoint's complaint is irrelevant. Regardless of whether cellular carriers may obtain 10 MHZ or 20 MHZ of PCS spectrum in-region, the site locations controlled by the cellular providers will still be controlled by them. Restricting cellular carriers to 10 MHZ of PCS spectrum in-region (as requested by Omnipoint) will make it no easier for PCS licensees to obtain site locations already controlled by cellular providers. Omnipoint

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[5] Omnipoint repeatedly refers to cellular providers as duopolists. That would be accurate only if the market is limited to cellular providers. Even under the Commission's CMRS definition, which Radiofone has demonstrated was too narrow, there are more than two competitors, and thus no duopoly.

furthermore does not consider the fact that cellular carriers may not control the site locations they use, or that there may be no space for additional antennas. In such situations, cellular carriers may not have any advantage at all over new PCS providers in being able to place PCS antennas at existing cell sites.

The same is true with respect to Omnipoint's assertions concerning the relocation of microwave incumbents. Omnipoint Pet. at 12. Cellular carriers obtaining PCS spectrum will need to clear microwave incumbents just as new PCS providers will. Additionally, Omnipoint asserts that the 10 MHZ blocks were made available to help PCS providers engineer around microwave incumbents. Id. Omnipoint notably provides no citation to the record in support of its assertion, and Radiofone is not aware of any. Moreover, Omnipoint's assertion merely amounts to the proposition that "more spectrum is better." If Omnipoint simply wants more spectrum, it need not worry; it will have the opportunity to out-bid cellular carriers in the auction.

The limitation sought by Omnipoint would also not resolve the "embedded customer base" assertedly enjoyed by cellular providers. Omnipoint Pet. at 12. In fact, if a cellular provider obtains a PCS license, it would have a more difficult task in obtaining customers, because it would seek to obtain new mobile customers and not merely to cannibalize the cellular customers it now has. By comparison, a wholly new PCS provider would be perfectly content to take customers from an existing cellular provider.

Omnipoint next complains that a cellular operator may achieve build-out at a lower cost than a PCS operator. Omnipoint Pet. at 12. Even if this were true, it would not be injurious to competition. In a competitive market, as communications is becoming, lower costs must be passed on to consumers in the form of lower prices. Lower prices is a beneficial goal that the antitrust laws

seek to encourage. See Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 594 (1986).

Omnipoint then asserts that PCS operators need new numbers whereas cellular carriers do not. Omnipoint Pet. at 13. Omnipoint's assertion should be dismissed for several reasons. First, as discussed above, Omnipoint ignores the fact that cellular carriers likely would seek to obtain new mobile customers and not merely to cannibalize the cellular customers it now serves. Thus, cellular carriers also would need new numbers for their new PCS subscribers. Second, Omnipoint ignores the fact that many PCS operators are wireline exchange carriers who have access to vast quantities of numbers. Finally, Omnipoint's assertion does not explain why its proposal to limit cellular carriers to 10 MHZ of PCS spectrum would necessarily reduce the quantity of numbers that a cellular carrier would need, as compared to the quantity of numbers needed to support 20 MHZ of PCS spectrum.

Omnipoint finally argues that the cellular providers have tied up exclusive arrangements with retail providers. This argument shows the self-interest and lack of reality that permeates Omnipoint's position. There is no shortage of desirable retail outlets for consumer communications equipment. New outlets are created every day. Additionally, assuming (as Omnipoint clearly does) that PCS will be attractive to consumers, retail outlets will make sure they are able to carry and sell PCS hand-sets. Moreover, manufacturers of PCS handsets, who may not be PCS licensees, will certainly find multiple avenues to sell to the public.

CONCLUSION

WHEREFORE, for the foregoing reasons, Radiofone respectfully requests the Commission to deny Omnipoint's Petition for Reconsideration.

Respectfully submitted,
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CERTIFICATE OF SERVICE

I, Ashton Hardy, a member of the law firm of Hardy and Carey, hereby certify that on this 28th day of August, 1996, I have caused a copy of the foregoing to be sent via first class U.S. mail, postage prepaid, to:

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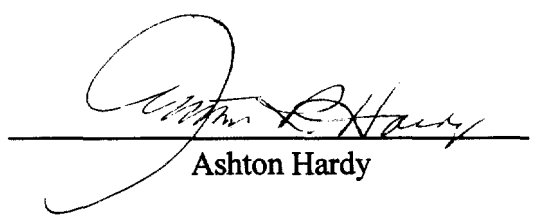

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